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SUBJECT: LEBANON TRIBUNAL: P-3 PERMREPS ENGAGE COUNCIL
MEMBERS ON DRAFT UNSCR

REF: A. USUN 384
[1](#)B. USUN 389

[1](#)1. (SBU) Summary. P-3 PermReps joined forces May 18 to canvass their Council counterparts to explain the draft Chapter VII resolution on the Special Tribunal for Lebanon (ref A) and seek their support. Most delegations said they had yet to receive instructions on the draft text and conceded that their position would likely be determined at a political level in capitals. While expressing concerns about the consequences for political stability in Lebanon of Council action, Indonesia and South Africa suggested that they would wait for further consultations with the GOL before adopting a position on the resolution. Panama and Peru underlined strong legal concerns about the precedent of the Council deciding to bring into force an agreement that a country has failed to ratify. Qatar pushed for a delay in Council action on the tribunal to give the Lebanese parliamentary process one last chance. Ghana seemed inclined to support the text. The British met bilaterally with Ghana and reported a positive reaction. The Congolese Charge told the French he was concerned about the political impact in Lebanon. At this stage the P-3 count only six firm votes: the P-3, Belgium, Slovakia, and Ghana. End Summary.

P-3 PermReps Engage Counterparts

[1](#)2. (SBU) P-3 PermReps engaged with their Council counterparts May 18 to explain the draft Chapter VII resolution on the Special Tribunal for Lebanon (ref A) and press for support. The P-3 diplomats drew a distinction between the "light" approach in the P-3 text, which calls on the Council to "decide" that the tribunal agreement and statute previously agreed to by the government of Lebanon and the UN shall enter into force, and the "heavy" alternative of asking the Council to decide to establish an international tribunal as a subsidiary body of the UNSC. In response to arguments about the alleged negative effect of a Chapter VII resolution on stability in Lebanon, P-3 PermReps argued instead that Lebanon's stability would be undermined if the Council fails to act. They explained that the UNIIIC criminal investigation of the Hariri and other political assassinations would benefit from the establishment of the tribunal, and defended the timing of Council action by noting that both PM Siniora and SYG Ban have declared the Lebanese parliamentary process deadlocked. The Lebanese Government and people have requested the Council's assistance, the P-3 concluded, and the Council cannot let them down.

Indonesia: Waiting for Siniora

13. (SBU) Pending instructions from her capital, Indonesian DPR and Charge Asmady suggested to Ambassador Khalilzad and French DPR Lacroix that her government would want to wait until GOL PM Siniora visits Jakarta -- scheduled for May 24 -- before adopting a position on the draft resolution. Noting that the Lebanese parliament "must have good reasons not to ratify the agreement," she asked whether Council action to establish the tribunal would help stabilize Lebanon. Asmady contended that it might be better to wait for Lebanese consensus rather than act now. Indonesia does not want to take sides in an internal Lebanese dispute and must balance the risk of stability and threats to UNIFIL -- to which Indonesia contributes forces -- with the need to establish the tribunal.

South Africa: Siniora-Mbeki Contact Key

14. (SBU) South African PR Kumalo told Ambassadors Khalilzad and UK DPR Pierce that PM Siniora had talked to SAG President Mbeki about Council action on the tribunal. Kumalo said he expected that the close relationship between the two leaders would play an important role in deciding Pretoria's stance on the resolution. In the meantime, Kumalo argued that the Council should be in "no rush" to move forward on the resolution. South Africa supports the need to establish the tribunal and agrees that it would help the UNIIIC investigation, but has the Council exhausted all other options besides Chapter VII? The UNSC must also be wary not to cause more trouble in Lebanon through its actions. Specifically, the Council should be careful not to pre-empt the role of the Lebanese parliament. The problem, Kumalo opined, is that Lebanon asks the Council to do "everything"

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for it. If the Council must act, though, he expressed preference for the "light" approach on a resolution rather than the "heavy" option. Kumalo also noted the letter from President Lahoud, which he construed to mean that Lahoud does not oppose establishment of the tribunal but objects to Siniora's request for Council action.

Panama: Serious Legal Concerns

15. (SBU) Panamanian PR Arias told Ambassadors Khalilzad and de la Sabliere that he has serious concerns about the legal and political implications of the draft resolution. While the draft text "might be a light option for Lebanon, it is a heavy option for the rest of the world" because of the "serious repercussions" of the precedent it would set of the Council imposing an agreement on a country that had failed to ratify it. Taking his argument to the "absurd," he wondered if this action meant the Council could impose the still-unratified Kyoto Treaty on the United States. Instead, he suggested that the Council could either establish a Special Tribunal for Lebanon as a subsidiary organ of the UN, taking into account Lebanese law, or send the case to the ICC. (Note: Arias conceded the case for ICC jurisdiction is weak, but argued that the Hariri murder plus other attacks could constitute a crime against humanity. End Note.)

16. (SBU) After much back and forth on his two alternatives, Arias eventually proposed two other ideas. First, the UNSC could consider a mission to Lebanon to better understand the situation. (Note: Arias participated on the Council's recent trip to Kosovo but has yet to commit to a position on that draft resolution. End Note.) Second, similar to a proposal he has offered to the text of the Kosovo resolution, Arias suggested that the Council adopt a resolution that decides to establish a tribunal four weeks from the date of the resolution's adoption if the Lebanese have failed to ratify the tribunal agreement by that point. Arias eventually

agreed to consult UN Legal Counsel Nicolas Michel on the legal implications of the draft resolution, and to consider the precedent of the UNSC Chapter VII resolution mandating the transfer of Charles Taylor to the Hague.

Peru: Solidarity With Panama

¶17. (SBU) Noting that he had spoken with Lima about the draft resolution on May 18 but did not yet have formal instructions, Peruvian PR Voto-Bernales told Ambassador Khalilzad that he had serious legal concerns about the Council taking action to bring the agreement into effect. He emphasized that Peru strongly supports the UNIIIC investigation and wants the perpetrators of the Hariri assassination brought to justice. While Peru also wants to "untie the knot" of the Lebanese parliament's failure to convene, the Council could consider other options besides "breaking new ground" with this unprecedented legal approach.

Although he was careful not to endorse the idea of Council action on the tribunal, Voto-Bernales offered establishment of an international tribunal as a subsidiary organ of the UNSC or referral to the ICC as two possible alternatives to the approach taken in the draft P-3 text. In response to Ambassador Khalilzad's point that the P-3 did not want to re-open the agreement and statute in order to establish an international tribunal as a subsidiary body of the UNSC (i.e. the "heavy" option), Voto-Bernales argued that the agreement and statute have "no legal standing" because they have not yet been ratified. While at this point he could not promise his support for the resolution, Voto-Bernales conceded Peru's decision would likely be taken at a political level.

Qatar: Pushing for a Delay

¶18. (SBU) During a quick pull-aside with Ambassador Khalilzad, Qatari PR al-Nasser initially suggested that PM Siniora on May 17 had agreed in a phone conversation with Qatari Prime Minister Hamid bin Jasim to a one or two week delay in Council action to encourage a Lebanese solution. If bin Jasim fails to secure a Lebanese solution in that time, Nasser reported, Qatar would then support the draft resolution. Embassy Beirut and the Lebanese Mission in New York later clarified that PM Siniora had not agreed to any such delay, but had instead welcomed bin Jasim to do whatever he could to encourage Lebanese parliamentary ratification while the Council continued to move forward on the draft P-3

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resolution. In a subsequent phone conversation with al-Nasser, Ambassador Khalilzad clarified that Qatar would have only two to three days to secure a Lebanese solution before the Council would have to act.

Ghana Seems Solid

¶19. (SBU) The British expert on Lebanon reported that UK DPR Pierce's meeting with Ghanaian Charge Christian went well. Although Christian did not yet have instructions from Accra, he reportedly did not expect to have any problems with the draft resolution. He expressed appreciation for the P-3's "light" approach to the resolution and noted that the draft did not attempt to compel cooperation from third states or overcome immunities.

Congo Nervous, But French Have Influence

¶10. (SBU) According to French Mission experts, French PR de la Sabliere's meeting with Congolese PR Ikouebe was "not encouraging." Although Ikouebe conceded that his instructions are ten days old -- from around the time that Michel briefed the Council -- he told de la Sabliere that Congo has strong political concerns about Council action to

establish the tribunal and believes the UNSC should not take sides in Lebanon. Ikouebe also conceded, though, that the UNSC had now "entered a new phase" after receiving PM Siniora's letter and SYG Ban's briefing. Ikouebe also recalled President Lahoud's view and noted the importance of the views of the Lebanese community in Congo-Brazzaville (NFI).

Comment

¶11. (SBU) Although most delegations have yet to receive instructions on the draft resolution, we count only six solid votes in favor -- U.S., France, UK, Belgium, Slovakia, and Ghana. In order to ensure a positive dynamic in the Council when the P-3 formally table the resolution, USUN recommends that the Department demarche UNSC capitals again at a high level before a second round of consultations in New York on/around May 23. We understand France will do the same.
KHALILZAD